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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 203, 204, 212, 222, and 252**

**RIN 0750-AH93**

**Defense Federal Acquisition Regulation Supplement: Further Implementation of Trafficking in Persons Policy (DFARS Case 2013-D007)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement DoD trafficking in persons policy, and to supplement Governmentwide changes proposed in connection with Executive Order 13627, to improve awareness, compliance, and enforcement.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Amy Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The United States Government's longstanding policy prohibiting human trafficking in Federal supply chains is codified in

Governmentwide acquisition regulations at FAR subpart 22.17. DoD is strengthening its policies and practices to ensure that no taxpayer resources are used to support such egregious labor violations. DoD has identified a number of important supplementary actions to help eradicate trafficking in its own supply chain. The DFARS coverage ensures that employees of DoD contractors are fully aware of their labor rights and that they have a means of reporting suspected labor violations directly to the DoD Inspector General's office. These added protections will further improve stability, productivity, and certainty in the contingency operations that DoD supports, and they will ensure that DoD contractors do not benefit from the use of coerced labor.

DoD published a proposed rule in the **Federal Register** at 78 FR 59325 on September 26, 2013, to further implement DoD trafficking in persons policies to improve awareness, compliance, and enforcement. Two respondents submitted public comments in response to the proposed rule.

## **II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule. A discussion of the comments follows:

### *A. Summary of significant changes from the proposed rule*

There were no changes from the proposed rule as a result of public comments. One minor editorial change was made to the

title of the new provision 252.222-7007, Representation Regarding Combating Trafficking in Persons, to use the word "regarding" in lieu of "with regard to."

*B. Analysis of public comments*

*Comment:* Both respondents commended the drafters of the proposed rule. One respondent expressed appreciation that the drafters listened to stakeholder organizations that offered comments at the public meeting on ending trafficking in persons earlier in 2013. The other respondent stated that the proposed rule goes a significant way towards implementing the requirements of Executive Order 13627 and title XVII of the National Defense Authorization Act for FY 2013. The respondents did not suggest any changes to the DFARS proposed rule.

*Response:* Noted.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action

and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulations Supplement (DFARS) to improve awareness, compliance, and enforcement of DoD policies on combating trafficking in persons. This rule requires the display of hotline posters on combating trafficking in persons and whistleblower protection for contracts and subcontracts, not for the acquisition of commercial items, that exceed \$5 million (for performance both inside and outside the United States), display of a contractor employee bill of rights when the contract includes the DFARS clause 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, and a representation regarding hiring policies that is required in all DoD solicitations and contracts that exceed the simplified acquisition threshold.

There were no public comments in response to the Initial Regulatory Flexibility Analysis.

About 58,000 small entities do business with DoD. The mandatory disclosure requirements and the hotline poster requirements only apply to small business concerns with DoD contracts or subcontracts, not for the acquisition of commercial items, that exceed \$5 million. The representation regarding hiring practices applies to all small business concerns (and all other businesses) that respond to solicitations with an estimated value exceeding the simplified acquisition threshold. The requirement to display the contractor employee bill of rights only applies to contracts with contractor personnel supporting U.S. Armed Forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises, when designated by the combatant commander. None of these requirements is expected to impose a significant economic burden on small business concerns.

There are no information collection requirements in this rule. This rule adopts dollar thresholds wherever possible and limits certain requirements to contracts where contractor personnel support U.S. Armed Forces deployed outside the United States. There were no additional alternatives identified that could further decrease the impact on small entities.

## **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 203, 204, 212, 222, and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 203, 204, 212, 222, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 203, 204, 212, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

2. In section 203.1004, paragraph (b)(2)(ii) is revised to read as follows:

**203.1004 Contract clauses.**

\* \* \* \* \*

(b)(2)(ii) Unless the contract is for the acquisition of a commercial item, use the clause at 252.203-7004, Display of Hotline Posters, in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s), in solicitations and contracts, if the contract value

exceeds \$5 million. If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster (see FAR 3.1003).

## **PART 204—ADMINISTRATIVE MATTERS**

### **204.1202 [Amended]**

3. In section 204.1202, redesignate paragraphs (2)(iv) through (xiii) as paragraphs (2)(v) through (xiv), respectively, and add a new paragraph (2)(iv) as follows:

#### **204.1202 Solicitation provision.**

\* \* \* \* \*

(2) \* \* \*

(iv) 252.222-7007, Representation Regarding Combating Trafficking in Persons.

\* \* \* \* \*

## **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

4. In section 212.301, redesignate paragraphs (f)(vii) through (f)(xvii) as paragraphs (f)(viii) through (xviii), respectively, and add a new paragraph (f)(vii) to read as follows:

#### **212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) \* \* \*

(vii) *Part 222—Application of Labor Laws to Government Acquisitions.* Use the provision at 252.222-7007, Representation

Regarding Combating Trafficking in Persons, as prescribed in 222.1771.

\* \* \* \* \*

#### **PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

5. The authority citation for 48 CFR part 222 is revised to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

6. Add sections 222.1770 and 222.1771 to subpart 222.17 to read as follows:

##### **222.1770 Procedures.**

For a sample checklist for auditing compliance with Combating Trafficking in Persons policy, see the Defense Contract Management Agency checklist, Afghanistan Universal Examination Record Combating Trafficking in Persons, available at DFARS Procedures Guidance and Information 222.17.

##### **222.1771 Solicitation provision.**

Unless the solicitation includes the provision at 252.204-7007, use the provision at 252.222-7007, Representation Regarding Combating Trafficking in Persons, in all solicitations and contracts that exceed the simplified acquisition threshold, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

7. Section 252.203-7004 is revised to read as follows:



## **252.203-7004 Display of Hotline Posters.**

As prescribed in 203.1004(b)(2)(ii), use the following clause:

### **DISPLAY OF HOTLINE POSTERS (JAN 2015)**

(a) *Definition.* *United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* (1) The Contractor shall display prominently the DoD fraud hotline poster, prepared by the DoD Office of the Inspector General, in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts.

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds, the DHS fraud hotline poster shall be displayed in addition to the DoD fraud hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from:

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*[Contracting Officer shall insert the appropriate DHS contact information or website.]*

(c) *Display of combating trafficking in persons and whistleblower protection hotline posters.* The Contractor shall display prominently the DoD Combating Trafficking in Persons and Whistleblower Protection hotline posters, prepared by the DoD Office of the Inspector General, in common work areas within business segments performing work under DoD contracts.

(d) (1) These DoD hotline posters may be obtained from: Defense Hotline, The Pentagon, Washington, D.C. 20301-1900, or are also available via the internet at [http://www.dodig.mil/hotline/hotline\\_posters.htm](http://www.dodig.mil/hotline/hotline_posters.htm).

(2) If a significant portion of the employee workforce does not speak English, then the posters are to be displayed in the foreign languages that a significant portion of the employees speak. Contact the DoD Inspector General at the address provided in paragraph (d) (1) of this clause if there is a requirement for employees to be notified of this clause and assistance with translation is required.

(3) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of these required posters at the website.

(e) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that exceed \$5 million except when the subcontract is for the acquisition of a commercial item.

(End of clause)

8. Section 252.204-7007 is amended by—

a. Removing the provision date "(DEC 2014)" and adding "(JAN 2015)" in its place; and

b. Redesignating paragraphs (d)(1)(iii) through (vii) as paragraphs (d)(1)(iv) through (viii), respectively, and adding a new paragraph (d)(1)(iii).

The addition reads as follows:

**252.204-7007 Alternate A, Annual Representations and  
Certifications.**

\* \* \* \* \*

(d)(1) \* \* \*

(iii) 252.222-7007, Representation Regarding Combating Trafficking in Persons, as prescribed in 222.1771. Applies to solicitations with a value expected to exceed the simplified acquisition threshold.

\* \* \* \* \*

9. Add new section 252.222-7007 to read as follows:

**252.222-7007 Representation Regarding Combating Trafficking in  
Persons.**

As prescribed in 222.1771, use the following provision:

**REPRESENTATION REGARDING COMBATING TRAFFICKING IN PERSONS (JAN  
2015)**

By submission of its offer, the Offeror represents that it—

(a) Will not engage in any trafficking in persons or related activities, including but not limited to the use of forced labor, in the performance of this contract;

(b) Has hiring and subcontracting policies to protect the rights of its employees and the rights of subcontractor employees and will comply with those policies in the performance of this contract; and

(c) Has notified its employees and subcontractors of—

(1) The responsibility to report trafficking in persons violations by the Contractor, Contractor employees, or subcontractor employees, at any tier; and

(2) Employee protection under 10 U.S.C. 2409, as implemented in DFARS subpart 203.9, from reprisal for whistleblowing on trafficking in persons violations.

(End of provision)

10. Section 252.225-7040 is amended by—

a. Removing the clause date "(MAY 2014)" and adding "(JAN 2015)" in its place; and

b. Adding paragraph (d) (8).

The addition reads as follows:

**252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.**

\* \* \* \* \*

(d) \* \* \*

(8)(i) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license, regardless of the documents' issuing authority;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal host-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel supporting the U.S. Armed Forces.

\* \* \* \* \*

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